



ajohnston@telecomlawpros.com  
202.552.5121

**Via ECFS**

October 21, 2016

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20554

Re: **PCS Partners, L.P. Petition for Waiver of 47 C.F.R. 90.353(b)  
and Request for Extension of Time, WT Docket No. 16-149**

Dear Ms. Dortch:

PCS Partners, L.P. (“PCSP”), by its attorneys, hereby responds to the *ex parte* communication of Public Knowledge (“PK”), dated September 15, 2016 and filed in the above-referenced docket and other proceedings.<sup>1</sup>

As set forth in its Petition for Waiver and Request for Extension of Time in WT Docket No. 16-149 (“Petition”), PCSP has identified a clear path forward for near-term utilization of its Multilateration and Location Monitoring Service (“M-LMS”) spectrum. The Petition seeks a relaxation of Section 90.353(b) of the Commission’s rules, which permits the transmission of voice or non-voice “status and instructional messages” only if such messages are related to the location or monitoring functions of the system, in order to permit short, infrequent packet transmissions in M-LMS bands at scheduled times utilizing equipment that incorporates the latest version of the 3GPP LTE standard. The requested waiver would enable PCSP to deploy an LTE system capable of supporting both trilateration-based M-LMS and machine type communications for narrowband Internet of Things applications and services. The Petition also requests extensions of time to satisfy the construction deadlines applicable to PCSP’s licenses.

The PK *Ex Parte* posited that “the Commission needs to adopt some principles or processes to guide its consideration” of a “growing list of proceedings” that purportedly “rais[e] similar issues.”<sup>2</sup> The PCSP Petition is among the proceedings cited by PK.<sup>3</sup>

---

<sup>1</sup> Letter from Harold Feld, Senior Vice President, Public Knowledge, to Marlene H. Dortch, Secretary, Federal Communications Commission, Re: GN Docket No. 14-177 – Use of Spectrum Bands Above 24 GHz for Mobile Radio Services (Spectrum Frontiers), *et al.* (Sept. 15, 2016) (“PK *Ex Parte*”).

<sup>2</sup> PK *Ex Parte* at 3.  
{00101017;v1}

PK's arguments are misplaced as applied to PCSP's Petition. PK lists four principles that it asserts should guide Commission decisions concerning licensees that seek to use their licensed spectrum "more profitably and efficiently": (1) "Is the licensee actually providing service today, or made [*sic*] a good faith effort to provide service?"; (2) "Are there reasons for granting exclusive use of the new spectrum rights, or can they be shared?"; (3) "The Commission must regain control of the testing process, which has become a barrier to any changes in the spectrum environment."; and (4) "The Commission may properly exercise its authority under [47 U.S.C. §] 303(y) by establishing a combination testing regimen and post-deployment rules that would provide reasonable assurance prior to deployment that operation will not cause harmful interference, but would also provide clear authority and means for the Commission to address interference problems that would emerge going forward."<sup>4</sup>

Of these four "principles," PK discusses only the first – actual provision of service, or good faith effort to provide service – in relation to the PCSP Petition. Specifically, PK contrasts PCSP with certain licensees in services other than M-LMS, and, based on this selective comparison, finds PCSP lacking. In doing so, however, PK completely abandons its own "good faith" principle, replacing it with unsupported and speculative assertions about why PCSP has not yet provided service.<sup>5</sup> The Commission should reject PK's wholly subjective (indeed, unprincipled) view of what constitutes "good faith." PCSP has at all times acted in good faith, consistent with Commission rules and guidance, as well as market realities, regarding utilization of its M-LMS spectrum.

With respect to PK's other "principles," which involve considerations of sharing and interference resolution, PK provides no rationale for applying them to M-LMS generally or the PCSP Petition specifically. In fact, longstanding rules already provide for broad sharing of the M-LMS bands, and PCSP and other M-LMS licensees are subject to a unique co-existence testing regime that has been implemented previously by another M-LMS licensee.

Finally, and most importantly, PK ignores the reality that the Commission already has in place "principles [and] processes" that are sufficient to address the PCSP Petition. These legal principles and processes are contained in the Communications Act of 1934, the Commission's rules, and numerous precedential decisions. For example, fundamental administrative law principles obligate the Commission to give waiver requests a "hard look"<sup>6</sup> and to treat similarly situated parties in a similar fashion.<sup>7</sup> Other

---

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 3-4.

<sup>5</sup> *See id.* at 3.

<sup>6</sup> *See WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

<sup>7</sup> *See Garrett v. FCC*, 513 F.2d 1056 (1975) (federal administrative agencies cannot "treat similar situations in dissimilar ways") (quoting *Herbert Harvey, Inc. v. NLRB*, 424 F.2d 770, 780 (1969)); *Melody Music v. FCC*, 345 F.2d 730, 732-733 (1965).



relevant principles and procedures are discussed in PCSP's Petition and Reply Comments in WT Docket No. 16-149.<sup>8</sup> In short, the Commission should consider, and grant, the PCSP Petition under applicable legal principles and procedures, and not under those set forth in the PK *Ex Parte*.

Please contact me with any questions regarding this filing.

Sincerely,

/s/ E. Ashton Johnston  
E. Ashton Johnston

cc: Jon Wilkins  
Suzanne Tetreault  
Brian Regan  
Roger Noel

---

<sup>8</sup> See also In the Matter of Requests by FCR, Inc., Progeny LMS, LLC, PCS Partners, L.P. and Helen Wong-Armijo for Waiver and Limited Extension of Time, WT Docket No. 12-202, Petition for Partial Reconsideration and Clarification of PCS Partners, L.P. (Sept. 29, 2014). {00101017;v1}